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No. 89-1361

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

CHURCH OF SCIENTOLOGY OF CALIFORNIA,
Petitioner,

vs.

LARRY WOLLERSHEIM,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

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Dated: March 27, 1990

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QUESTIONS PRESENTED

1. Whether the free exercise clause of the First Amendment prohibits courts from imposing tort liability on the Church of Scientology for the intentional infliction of emotional distress based on evidence of its coercive behavior toward respondent, and launching a campaign of personal and financial retribution against respondent when he left the group.

2. Whether the jury in this case was adequately instructed not to impose tort liability on the Church of Scientology based on its religious beliefs or conduct protected by the free exercise clause of the First Amendment.

3. Whether the Court of Appeal's opinion reflects that it adequately reviewed the 25,000 page trial court record.

4. Whether the free exercise clause of the First Amendment prohibits a properly-instructed jury from awarding punitive damages against the Church of Scientology for engaging in a pattern of coercive behavior against respondent, over the course of many years, which conduct exacerbated respondent's previously dormant asymptomatic predisposition to a bipolar manic-depression disorder and brought him to the brink of suicide, and which conduct was engaged in with a reckless disregard for respondent's mental condition and emotional instability, and which included a campaign of personal and financial retribution against respondent designed to punish him for leaving the group.

5. Whether the Court of Appeal's reduction of the jury's award of punitive damages in this case from $25 million to $2.0 million demonstrates that the reviewing court imposed strict limits on the jury's discretion to award punitive damages in this case, and fully afforded petitioner any rights that the Due Process Clause might require.*

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* Respondent has challenged the reduction of his damages in the courts below, and in his pending Petition for Writ of Certiorari. *See Wollersheim* v. *Church of Scientology of California*, No.89-1367, Pet. at 23-24.

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CHURCH OF SCIENTOLOGY OF CALIFORNIA,
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LARRY WOLLERSHEIM,
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ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent Larry Wollersheim, the plaintiff in the proceedings below, respectfully requests that the Court deny the Church of Scientology of California's petition for a writ of certiorari to review the judgment and opinion of the Court of Appeal of the State of California, Second Appellate District. That opinion is reported at 212 Cal. App. 3d 872, 260 Cal. Rptr. 331 (1989).

STATEMENT OF THE CASE

1. Introduction.

In accordance with this Court's Rule 15.1, respondent respectfully submits that the Questions Presented, as framed by the petitioner, are not fairly presented by the record in this case.[1] Throughout the proceedings in this case -- at trial, on appeal, in its petition for rehearing in the Court of Appeal, in its petition for review by the California Supreme Court and now in its Petition for Writ of Certiorari-- the petitioner has sought to transform all issues in this case into the question whether a church may be subjected to tort liability for engaging in "peaceful, voluntary religious practices." The evidence presented by respondent during a lengthy four and a half month trial demonstrated that -- insofar as petitioner engaged in the practices challenged by respondent at trial -- those practices were not peaceful, they were not voluntary, and they were not genuinely religious.

Respondent, who was on the witness stand for eighteen days (ten of those days consisting of cross-examination by the petitioner's attorneys), testified that the petitioner's practice of "auditing" never was presented to him as a religious practice, but rather was introduced to him as a scientific means of self-improvement. In 1974, petitioner's members held him against his will on board a ship for six weeks where he was subjected to hard labor and relentless coerced "auditing." Pet. App. at 7a. Respondent was urged by petitioner to "disconnect" from his family because of concerns they expressed about his continued membership in the group. Ibid. When respon-

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[1] Because respondent is dissatisfied with the Questions Presented as framed by the petitioner he has reframed those Questions on page i, in accordance with this Court's Rule 24.2, and to conform the questions to the findings of the jury and the decision of the Court of Appeal.

dent finally decided to leave Scientology, petitioner launched a successful campaign to destroy respondent's business, as part of a recognized practice of "fair game"[2] that petitioner has used in the past against former members, government officials, and other perceived enemies. Pet. App. at 8a.

The evidence of *petitioner's conduct* toward respondent, presented at trial, is fairly summarized in the Court of Appeal's opinion. *See* Pet. App. at 6a-9a. Indeed, the opinion goes so far as to state that in some circumstances, "auditing" and "disconnect" might be viewed as religious practices, Pet. App. at 23a, 32a, a characterization that respondent consistently resisted at trial and on appeal. But in the final analysis, based on its review of the lengthy record before it, the Court of Appeal concluded that the jury was correct in deciding that as petitioner conducted itself toward respondent its practices were not protected by the free exercise clause of the First Amendment because they were not practices in which respondent voluntarily engaged. *See* Pet. App. at 29a-33a. Rather, the Court of Appeal affirmed the jury's verdict on liability because the record supported respondent's claim that the practices at issue were coercive, outrageously dangerous to the respondent's mental health and well-being, and ultimately part of a deliberate campaign to ruin the respondent financially.

Petitioner presented its version of the facts to a jury. The jury rejected that version and, based on limiting instructions that fully protected petitioner's free exercise rights, found in favor of the respondent. The Court of Appeal reviewed the petitioner's arguments, and based on the factual record, rejected them. The holding below is limited to the facts of this case, and raises none of the broad questions of religious freedom that petitioner asks this Court decide.

2. The Nature of Scientology.

The Church of Scientology was founded in the early 1950's

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[2]A Scientology policy letter defined "fair game" as a policy in which enemies "may be deprived of property or injured by any means by any Scientologist [and] may be tricked, sued, lied to or destroyed." Pet. App. at 25a.

by the science fiction writer L. Ron Hubbard. This first church later became the Church of Scientology of California, the petitioner in this case. In 1950 Hubbard published a bestseller called *Dianetics: The Modern Science of Mental Health*. This quasi-scientific publication remains a basic text of the Church of Scientology.

Hubbard originally planned that "Dianetics" would be offered as a mental health discipline, but the techniques described in his book came under attack from the American Psychological Association and the American Medical Association. In the face of these attacks, Hubbard founded the Church of Scientology.

Since its founding Scientology has been engaged in many controversies, including its legal confrontations with the Food & Drug Administration and the Internal Revenue Service, and the conviction of several major church leaders for the theft of government documents, perjury, wiretapping, and other federal crimes.

This history of litigation -- often implicating petitioner's claim that its activities were protected by the free exercise clause of the First Amendment -- also was recently described by the Court of Appeals for the District of Columbia Circuit in *Founding Church of Scientology* v. *Webster*, 802 F.2d 1448, 1449-50 (D.C. Cir. 1986), *cert. denied*, 484 U.S. 871 (1987).[3]

Recently, because it was found to have diverted its profits to private individuals, the petitioner here has been determined not to be a tax exempt organization under §501(c)(3) of the Internal Revenue Code. *See Church of Scientology of California* v. *Commissioner of Internal Revenue*, 823 F.2d (9th Cir. 1987), *cert. denied*, 486 U.S. ____, 108 S. Ct. 1752 (1988). *See also Hernandez* v. *Commissioner of Internal Revenue*, ____U.S. ____, 109 S. Ct. 2136, 2142 n. 4 (1989).

During the proceedings below, the trial court determined on a motion for summary judgment that petitioner is a religion, a holding that respondent has challenged repeatedly, as is reflected in his *pro se* Petition for Writ of Certiorari now pending before this Court. *Wollersheim* v. *Church of Scientology of California*, No. 89-1367 (filed February 23, 1990). Although that holding is subject to con-

[3]*See also Wollerheim* v. *Church of Scientology*, No. 89-1367, Pet. at 12-21, 25.

siderable doubt, for purposes of this Brief in Opposition respondent acknowledges that the courts below found petitioner to be a religion and found that the practice of auditing may be a practice entitled to First Amendment protection. What is important about the *petitioner's* Petition for Writ of Certiorari, however, is that the jury, the trial court, and the Court of Appeal all determined, based on the evidence presented in this case, that respondent's participation in "auditing," particularly during and after his imprisonment in 1974, was coerced.

3. The Nature of The Proceedings Below.

Petitioner makes the remarkable assertion that in this case it "was subjected to what can only be characterized as a six-month heresy trial." Pet. at 11. It was through the trial tactics of the petitioner that the trial lasted as long as it did. The trial, interrupted several times by appeals and by separate lawsuits filed by petitioner to prevent respondent from having his day in court, finally commenced on February 18, 1986. Respondent called his first witness on February 26. Respondent called a total of 14 witnesses, and rested his case on May 8, 1986.

The length of the plaintiff's case was largely the result of *petitioner's* tactics on cross-examination. For example, the respondent himself testified on direct from April 3 through April 14, over the course of seven (7) trial days. He was then cross-examined by petitioner's counsel from April 14 through April 30, over the course of ten (10) trial days. Similarly, respondent's expert witness, Dr. Margaret Singer, testified on direct from March 12, 1986 through March 17, over the course of four (4) trial days. Her cross-examination by petitioner lasted from March 17 through March 20, over the course of four (4) trial days.

Following the close of plaintiff's case in chief, petitioner called to the stand more than fifty witnesses. The petitioner's defense lasted for six weeks, from May 12, 1986 through June 27, 1986.

The transcript of the trial alone is compiled in 95 separate volumes consisting of 14,800 pages of testimony. It is this record that the petitioner is asking this Court to review, after the California Court of Appeal reviewed the record and determined petitioner's arguments to be without merit, and after the California Supreme Court declined further review.

4. A Brief Summary Of The Evidence And The Manner In Which It Was Presented To The Jury.

Respondent's first experience with Scientology came at the age of 19, and he continued to take part in Scientology courses and auditing over the course of ten years. The entire thrust of respondent's case at trial was to demonstrate that the practices of Scientology in which he participated, and to which he was subjected, were neither peaceful, nor voluntary, nor central to any system of religion that was presented to him. Respondent's own testimony in this regard was supported by that of former high ranking Scientologists and that of expert witnesses.[4]

Dr. Margaret Singer, a research and clinical psychologist, testified that respondent experienced a bipolar manic depressive disorder reaching the level of psychosis as a result of having been "subjected to a series of interacting routines [auditing] and behaviors in which he was forced to participate." R.T. at 2192. Dr. Singer testified that respondent had been "desensitized" by Scientology's thought reform program to the extent that when his wife was severely burned in an accident, he acquiesced in the directions of other Scientologists to direct his wife not to sue Scientology or claim disability benefits as a result of the accident. R.T. at 2200. Respondent, according to Dr. Singer, was forced into a state of emotional and financial dependence on Scientology, by a fear of incurring a large "free-loader debt" for the prohibitive costs of Scientology courses and auditing he had earlier received at a member's "discount," by a fear of being declared a "suppressive person" or "SP," which would result in social isolation and mandatory "ethics handling," and by a fear that if he went "against the Church of Scientology [he was] going

[4]For example, Ed Walters, a former Church Guardian office minister, testified that beginning as early as 1976, respondent was declared a suppressive person and was subject to "fair game."

to die." R.T. at 2414-16. Dr. Singer also testified how respondent had been tormented after leaving Scientology by feelings of dread caused in part by successful efforts of the Church of Scientology to ruin his business, by contacts with members who urged him to fire his trial counsel, and by being followed and tracked down. R.T. at 2431-34.

As a result of his experiences in Scientology, respondent not only had been induced into a severe bipolar disorder, but also suffered from panic attacks, psychogenic amnesia, and a post-traumatic stress disorder. Dr. Singer testified that "auditing," as it was experienced by respondent, was part of a process of coercive "thought reform" that precipitated or was the major cause of respondent's severe mental and emotional disorders. *See e.g.*, R.T. at 2502-03.

The trial record also is replete with examples in which the court very carefully prohibited any inquiry into the content of Scientology's beliefs in general, let alone any comment by the witnesses concerning the validity of those beliefs or the sincerity of Scientology's adherents. *See, e.g.*, R.T. at 2045 (court directs respondent's trial counsel and Dr. Singer not to inquire into or comment upon Scientology's belief in and practice of auditing generally, representations made by members of Scientology as to the benefits, nature or efficacy of auditing, or evidence of the alleged success or failure of auditing); R.T. at 2374 (court declines to define for the jury, in response to juror questions, what an "operating thetan" is); R.T. at 2382-2390 (court refuses to permit witnesses to testify concerning any of the content of "upper level" Scientology materials).

Finally, the jury was instructed quite explicitly not to make any judgments about the beliefs of Scientology or to base its findings *in any way* upon the validity of the "religious beliefs and practices of Scientology," including auditing. The Court instructed:

> Now, during the course of the trial you have heard evidence concerning certain of the religious beliefs and practices of the defendant Church of Scientology of California including the practice of auditing. You are instructed that the defendant is a religious organization and that Scientology is a religion and entitled to protection as to its religious

> beliefs and religious practices under the First Amendment of the United States Constitution.
>
> Therefore, during your deliberations you must not and will not make any inquiry into the validity of their religious beliefs and practices of the church or its members as those beliefs and practices, including auditing have become known to you during the trial, nor will you base your verdict in any way on any evaluating of the validity of the religious beliefs and practices of Scientology.
>
> * * * * *
>
> It is not for you, the jury, to attempt to determine the truth of any religious statement, nor is it proper to sift through the teachings of Scientology and pick out individual statements for scrutiny deciding whether each standing alone is religious.

R.T. at 14,778-79.

The jury also was instructed that it could base a verdict for respondent only on "extreme and outrageous conduct . . . which goes beyond all possible bounds of decency so as to be regarded as atrocious and utterly intolerable in a civilized community." R.T. at 14, 786.

It was based on respondent's evidence of physical, financial and psychological coercion, coupled with degradation and psychological dread, and the foregoing instructions, that the jury found petitioner liable for the intentional infliction of emotional distress and awarded substantial compensatory and punitive damages. It was that verdict of liability that the Court of Appeal affirmed, carefully limiting its holding to the facts presented. *See* Pet. App. at 6a, 12a-34a.

REASONS FOR DENYING THE WRIT

With respect to the issues raised by petitioner, the decision of the California Court of Appeal is correct, and is narrowly circumscribed to the facts presented by this case. The Questions Presented by the petitioner are not fairly presented by the record evidence or the decision below. There is no conflict between the decision below and any decisions of this Court or of other appellate courts, arising from similar factual circumstances. Therefore, review by this Court is not warranted.

I. The Jury And The Courts Below Did Not Impose Damages Against Petitioner Based Upon Its Free Exercise Of Peaceful Religious Practices.

Contrary to petitioner's assertions, the California courts in this case have not sanctioned the imposition of tort liability against a church based upon "voluntary participation in peaceful religious practices." *See* Pet. at 13. To the contrary, the jury's finding of liability was affirmed solely because sufficient evidence was presented by respondent at trial to show that the practices in question were coercive and were not peaceful. *See* Pet. App. at 22a (practice of "fair game," even if religious, is not immune from civil liability because it was designed to ruin the respondent financially); *id.* at 27a-30a (respondent engaged in specific auditing sessions under the threat of physical compulsion, and a fear of becoming "fair game" and incurring a massive "freeloader debt"; these acts of coercion permeated all of respondent's participation in auditing); *id.* at 32a-33a (respondent was coerced into "disconnecting" from his family); *id.* at 33a-34a (petitioner's disclosure of confidential information about respondent for non-religious purposes is not protected "religious expression").

Recently, petitioner's counsel presented questions to this Court in *Church Universal & Triumphant, Inc.* v. *Witt*, No. 89-672, cert. denied, ____ U.S. ____, 110 S. Ct. 839 (1990), that were nearly identical to the questions presented here. In that case,

however, the issues resolved at trial really involved the church leaders' liability for the perpetration of an elaborate real estate swindle. In this case, as in *Witt*, while petitioner asserts that the issues involve the imposition of tort liability upon a church for engaging in peaceful, voluntary religious practices, the trial record and the Court of Appeal's decision make clear that those broad issues of religious freedom are not presented by this case.

II. The Judgment Below Could Not Have Rested On A Jury Finding That Violated Petitioner's Free Exercise Rights.

The petitioner's second question presented asks this Court to extend to this case the principle that reversal of a general verdict is required if the verdict may have rested on constitutionally-protected activity. *See e.g., Stromberg* v. *California*, 283 U.S. 359 (1931). In this case, however, the jury was expressly instructed that Scientology was a religion and that "auditing" was part of petitioner's religious beliefs, and that no award of liability could be based upon an evaluation of petitioner's religious beliefs, or upon its religious practices. *See* R.T. at 14, 778-79 (quoted on pages 7-8 *supra*). This Court must assume that the jury followed the instructions it received. *See Delli Paoli* v. *United States*, 352 U.S. 232, 242 (1957).

And, as the Court of Appeal's opinion demonstrates, respondent presented ample evidence to establish petitioner's liability for activities that are *not* protected by the free exercise clause. Therefore, there is no reason to believe that the principles of *Stromberg* were violated by the Court of Appeal's affirmance of the jury's verdict of liability.

III. The Court of Appeal's Decision Reflects A Careful Review Of The Record.

Petitioner asserts that if the Court of Appeal had engaged in "an independent examination of the whole record" it could not have upheld the jury's finding of liability. *See* Pet. at 23. This assertion

essentially is premised on petitioner's argument that it was engaged in peaceful, voluntary religious practices, and flies in the face of respondent's contrary evidence, and the jury's determination, that petitioner was engaged in an outrageous pattern of coercive and retributive behavior toward respondent that caused him to sustain financial losses and severe psychological and emotional damage.

The Court of Appeal's opinion reflects that it did carefully evaluate petitioner's arguments in the light of the evidence presented at trial, and did engage in the independent examination of the whole record that petitioner seeks. *See* Pet. App. at 6a-9a, 19a-20a, 22a-28a, 33a-34a. This Court should decline petitioner's invitation to sift through the 15,000 pages of trial testimony again, in order to determine whether this Court agrees with the Court of Appeal's affirmance of the jury's verdict.

IV. The Jury's Award Of Punitive Damages Was Not Based On Petitioner "Providing Its Central Peaceful Religious Practices To A Parishioner."

Petitioner does not assert that a religious organization can never be held liable for punitive damages, but only claims that whenever a church is subjected to tort liability for religious practices -- even coerced or outrageous practices -- its liability must be limited to actual, compensatory damages. Pet. at 26-27 & n.22. Petitioner cites no decision of this Court, or of any state or federal appellate court, adopting the rule it espouses, arguing instead by analogy to the law of libel. *See Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 349-50 (1974) (forbidding punitive damage awards to libel plaintiffs unless they meet the constitutional test of "actual malice"). Moreover, the decision of the Court of Appeal reflects great solicitude toward petitioner's free exercise claims, particularly in reducing the jury's award of punitive damages from $25 million to $2 million. *See* Pet. App. at 42a-43a.[5]

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[5]Respondent has challenged the reduction of his damages in the courts below, and in his pending Petition for Writ of Certiorari. *See Wollersheim* v. *Church of Scientology of California*, No.89-1367, Pet. at 23-24.

The issue presented by petitioner is better left for resolution by this Court in another case for several reasons. *First*, this Court historically has been reluctant to modify the states' substantive laws of tort liability and remedies on constitutional grounds. And there are no reported decisions of which respondent is aware accepting petitioner's assertion that punitive damages may not be imposed based on certain forms of tortious conduct by a religious organization. Indeed, that argument was flatly rejected in *Christofferson* v. *Church of Scientology of Portland*, 57 Or. App. 203, 644 P. 2d 577, 607-08 (1982), *cert. denied*, 459 U.S. 1206 (1983).

Second, in this case, the award of punitive damages was predicated not only on "coercive" practices that petitioner claimed to be part of its religious beliefs, but also on acts that were not afforded any protection at all by the free exercise clause -- including the "fair game" campaign of retribution against the respondent, and the revelation of confidential information about respondent for non-religious purposes. *See* Pet. App. at 18a-22a, 33a-34a.

Third, the jury in this case was instructed to award punitive damages only if it found petitioner to be "guilty of oppression or malice" toward the respondent. R.T. at 14,795. "Malice" was defined for the jury as conduct "intended by the [petitioner] to cause injury to the [respondent] or carried on by the [petitioner] with a conscious disregard for the rights or safety of the [respondent]." R.T. at 14,796. "Oppression" was defined as "subjecting a person to cruel and unjust hardship in conscious disregard of that person's rights." *Ibid.*

Under the foregoing instructions, it is not realistic to assume that the jury's award of punitive damages in this case was based, even in part, on any activities by the petitioner that were legitimate objects of First Amendment protection. Certainly, punitive damages were not imposed as a result of Scientology providing its "central, peaceful religious practices" to a willing parishioner. *Cf.*, *Gertz*, *supra*, 418 U.S. at 350 (punitive damages may be recovered by a libel plaintiff where the "actual malice" standard of liability is met).

V. Petitioner's Due Process Rights Were Not Violated By The Jury's Award Of Punitive Damages, Substantially Reduced By The Court Of Appeal.

In at least five Petitions for Writ of Certiorari filed and decided since this Court's decision last Term in *Browning-Ferris Industries, Inc.* v. *Kelco Disposal, Inc.*, ____ U.S. ____, 109 S. Ct. 2909 (1989), petitioners have asked this Court to resolve the question whether the Due Process Clause imposes substantive or procedural limits on jury awards of punitive damages. *See, e.g., Vintage Enterprises, Inc.* v. *Jaye*, No. 89-456, *cert. denied*, ____ U.S. ____, 110 S. Ct. 377 (1989); *Clardy* v. *Sanders*, No.89-440, *cert. denied*, ____ U.S. ____, 110 S. Ct. 376 (1989); *Combined Insurance Co. of America* v. *Ainsworth*, No. 89-282, *cert. denied*, ____ U.S. ____, 110 S. Ct. 376 (1989); *Volkswagen of America, Inc.* v. *Gibbs*, No. 89-228, *cert. denied*, ____ U.S. ____, 110 S. Ct. 418 (1989); *Alcolac Inc.* v. *Elam*, No. 88-1992, *cert. denied*, ____ U.S. ____, 110 S. Ct. 69 (1989). This Court denied the petitions in each of these cases, and should deny this Petition as well.

This case does not even present the question whether the Due Process Clause may be violated by rules of law that permit juries unbridled discretion to award punitive damages, without adequate judicial guidance or control. Rather, the Court of Appeal in this case clearly imposed substantive limits on the jury's discretion to award punitive damages. In reducing the jury's award of punitive damages from $25 million to $2 million, the Court was guided by a three-factor test adopted in prior California appellate decisions evaluating jury awards of punitive damages. Thus, the reduction of the jury's award in this case was premised on the Court of Appeal's independent assessment of the "degree of reprehensibility of the [petitioner's] conduct," the ratio of compensatory damages to punitive damages, and the relationship of the award to the petitioner's net worth. *See* Pet. App. at 42a-43a.[6]

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[6]The respondent has challenged the Court of Appeal's application of those criteria to the facts of this case. *See* footnote 5 *supra*.

In some jurisdictions, reviewing courts are not empowered to adjust a jury's award of punitive damages based on a lack of proportionality to the compensatory damages suffered by the plaintiff. That is not the law in California, however, as demonstrated by the opinion below. Thus, this case does not present an appropriate occasion for this Court to seek to resolve the Due Process questions left unanswered in *Browning-Ferris*.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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